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U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Decter, et al.,	.	Docket #CV-13-3519 (JFB)
	.	
Plaintiffs,	.	
	.	United States Courthouse
V.	.	Central Islip, New York
	.	April 25, 2014
Second Nature Therapeutic	.	3:49 p.m.
Program, LLC, et al.,	.	
	.	
Defendants.	.	
.....	.	

TRANSCRIPT OF ORAL ARGUMENT  
BEFORE THE HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For The Plaintiffs:	Timothy Kilgannon, Esq. Kilgannon & Kilgannon, LLP 1551 Kellum Place Mineola, NY 11501
For The Defendant: (Second Nature Therapeutic Program, LLC)	Tyra Saechao, Esq. Kaufman Borgeest & Ryan 120 Broadway New York, NY 10271
For The Defendants: (Right Direction Crisis Intervention) (Skevics Corp.) (Brian T. Shepard)	Cristina Yannucci, Esq. Lewis Brisbois Bisgaard & Smith, LLP 77 Water St.-Ste. 2100 New York, NY 10005
Audio Operator:	

Transcribing Firm:

Writer's Cramp, Inc.  
6 Norton Rd.  
Monmouth Jct., NJ 08852  
732-329-0191

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1 THE CLERK: Calling case 13-CV-3519, Decter vs.  
2 Second Nature Therapeutic Program. Please state your  
3 appearance for the record.

4 MR. KILGANNON: For the Plaintiff, Timothy Kilgannon  
5 of Kilgannon & Kilgannon, 1551 Kellum Place. Good afternoon.

6 THE COURT: Good afternoon.

7 MS. SAECHAO: For the Defendant, Second Nature  
8 Therapeutic Program, Tyra Saechao with Kaufman, Borgeest &  
9 Ryan, 120 Broadway.

10 MS. YANNUCCI: For Defendants Right Direction Crisis  
11 Intervention, Skezics Corp. a.k.a. Skezics Corporation doing  
12 business as Right Direction Crisis Intervention and Brian T.  
13 Shepard, Lewis Brisbois Bisgaard & Smith, LLP by Cristina R.  
14 Yannucci, 77 Water Street, New York, New York.

15 THE COURT: Okay, good afternoon. As you know we're  
16 here with regard to the defense motion as well as the cross  
17 motion and this a chance for you to highlight anything you'd  
18 like to highlight from your papers. I'll give you up to 15  
19 minutes each. Well, you don't have to take the whole 15  
20 minutes, but to do that, so I'll let the Defendants' counsel  
21 go first, okay?

22 MS. YANNUCCI: Your Honor, on behalf of what has  
23 been referred to as the Skezics Defendants, for purposes of  
24 highlighting the arguments to the Court, based upon the papers  
25 that have been submitted, we would argue that, as a matter of

1 law, this Court should be dismissing the complaint as filed  
2 and denying the cross motion seeking leave to file the amended  
3 complaint which is annexed to the papers as filed by the  
4 Plaintiffs. In sum, in support of our motion using --

5 THE COURT: Can you just move the -- I'm having --  
6 you can move that screen or your chair.

7 MS. YANNUCCI: Oh.

8 THE COURT: I can't even see you behind that screen.

9 MS. YANNUCCI: You know what, why don't I stand?

10 THE COURT: I'd say miss you, but you moved over,  
11 but for a minute there I couldn't even see you.

12 MS. YANNUCCI: Better?

13 THE COURT: Yes, thanks.

14 MS. YANNUCCI: Your Honor, we have annexed to our  
15 papers a Custody Order and a Declaration of Authority. What  
16 the Custody Order does is establish for this Court that the  
17 sole legal custodial parent of the minor Plaintiff, now having  
18 attained majority age was his mother, who is a non-party,  
19 Ellyn Sosin. We submitted a Rule 56 statement should this  
20 Court evaluate this motion pursuant to Rule 56 as opposed to a  
21 Pleading Motion and we would highlight for this Court that  
22 Plaintiffs do not dispute the existence and validity of the  
23 Custody Order. Their one argument with regard to the Custody  
24 Order is that Ellyn Sosin's use of that Custody Order in  
25 filing a declaration or signing a Declaration of Authority by

1    which she properly authorized the Skevic's Defendants should  
2    not be permitted by this Court against public policy or some  
3    other unidentified violation of statute.

4           First, Your Honor, we did file a letter noting that many  
5    of the arguments contained in the Plaintiffs' reply papers  
6    were improperly raised, and really should have been subject of  
7    any opposition, and shouldn't be considered. However, even if  
8    they are, we would just identify or note to the Court, the  
9    lack of any case law, which the Plaintiffs submit either by  
10   their opposition or by their reply, which would permit this  
11   Court to reject the Custody Order and Declaration of  
12   Authority. At its core, we have a parent who is not the  
13   custodial parent. Every case cited both in our papers, and I  
14   believe in the papers submitted by Second Nature notes that in  
15   order to afford any of the remedies or even to permit them to  
16   go forward at this stage are based upon decisions issued by  
17   challenges made by a custodial parent. There is no dispute  
18   here that the Plaintiff, Kenneth, is not a custodial parent,  
19   or was not at the time of the acts alleged. We detail  
20   throughout our papers the basis for dismissal, but just  
21   briefly, by the causes of action, we would note the first  
22   cause of action is a false imprisonment claim made by the  
23   minor, Andrew, now attaining majority age, and with regard to  
24   that, we would rely on the lack of consent claim by the  
25   Plaintiff and refer this Court to the Custody Order and the

1 Declaration of Authority, and specifically to the common law  
2 in New York, which permits that there is a justification based  
3 upon the legality of an alleged imprisonment if -- is a  
4 defense to false imprisonment. Here, we have a Custody Order  
5 and we have a Declaration of Authority authorizing The  
6 Skezics, the Defendants, to do that, which is exactly  
7 challenged herein. This is an example, also of where the  
8 Plaintiffs are arguing about the Custody Order, but without  
9 providing any case law for this Court to reject the import of  
10 it and the basis for dismissal.

11 As regard to the assault, again this is a claim made only  
12 by the child, Andrew, and with regard to that we would note  
13 that the complaint is devoid of any factual pleadings that  
14 Andrew feared imminent harm. Now, Your Honor might note that  
15 in their reply papers they raise, I'm sorry, the Plaintiffs  
16 raise for the first time that Andrew had a {quote} {unquote}  
17 "fear of imminent harm" and that this is to be evaluated  
18 subjectively. As noted before, we would ask the Court ignore  
19 the arguments raised by Plaintiffs for the first time in their  
20 reply, but even if this Court were to consider those  
21 arguments, the case law cited by the Plaintiffs in support of  
22 this claim, specifically Bram vs. Lussak Realty Corp. does not  
23 support their position. In the Bram case, the fear of  
24 imminent harm was accompanied by a weapon, and here we have no  
25 pleading of a weapon by the Skezics Defendants. And I would

1 also highlight for this Court that there is no pleading with  
2 regard to intent, and that any such summary claim of intent  
3 would be expressly refuted by the Custody Order and the  
4 Declaration of Authority. It is with regard to this  
5 allegation that I would note that the Plaintiffs raise for the  
6 first time the whole public policy argument, holding that the  
7 Declaration of Authority shouldn't be considered by this  
8 Court, but neither of the cases cited by the Plaintiffs in  
9 support of this argument, particularly Fox or Kidder support  
10 such a thing, and in fact, we would submit that the  
11 Declaration of Authority provides expressly otherwise, which  
12 is that the Skezics Defendants ensured that the custodial  
13 parent provided evidence of the custodial and legal right to  
14 give the authority to Skezics to engage in this transport.  
15 The intentional infliction of emotional distress are asserted  
16 by both parent and son; however, with regard to that claim,  
17 the case law squarely permits this Court to dismiss the Cause  
18 of Action as a matter of law. We've relied upon Spector in  
19 the brief, and unless the Court has any specific questions, I  
20 will move on, and just note that in their reply regarding this  
21 claim, Plaintiffs argue for the first time that Andrew is  
22 stating that he was terrified. Again, this is improper, but  
23 despite that fact, and even if this Court were to consider the  
24 allegations submitted in a memo of law and reply, we would  
25 note that the elements of an intentional infliction of

1 emotional distress does not permit a pleading of a conclusary  
2 allegation of being terrified to adequately plead the required  
3 elements. With regard to tortuous interference by a parent,  
4 or with parental rights, again we go back to the fact that  
5 Kenneth really doesn't even have standard capacity to make  
6 this argument as he was not the custodial parent, but with  
7 regard to that, we think that the case law, specifically  
8 McGrady and matter of Dylan squarely refute this since Kenneth  
9 was not the custodial parent. The claims really are, at their  
10 essence, Your Honor, claims challenging Ellyn's actions with  
11 regard to the minor child. We would point out that one of the  
12 cases cited by Plaintiffs in their briefs to try to rebut the  
13 legal basis for dismissal is Pickle, and we would highlight  
14 for this Court that Pickle actually supports the arguments  
15 being made by Defendant, which is that the remedies, or the  
16 claims being sought, and the remedies being sought, are claims  
17 in Pickle that were being made by the lawful custodial parent,  
18 and the Court does not have that situation here.

19 With regard to the alien of affections claim submitted by  
20 both Andrew and Kenneth, the New York Civil Rights Law,  
21 Section 80, squarely abolish that claim, and as a matter of  
22 law, children in and of themselves do not have a cause of  
23 action for an alienation of affection and I would note to the  
24 Court that I believe that Plaintiffs' opposition and reply are  
25 both silent as to this point, so summary dismissal would be



1 appropriate in that instance.

2 With regard to the abduction of a child asserted by  
3 Kenneth, again, Your Honor, this is a claim asserted by the  
4 non-custodial parent. All of the case law indicates such a  
5 claim is one to be made by the custodial parent.

6 In sum, with regard to the conspiracy claim, the punitive  
7 damages claims, there are no facts in this complaint that  
8 would warrant any ability to proceed on these claims. In sum  
9 and substance, the complaint, and the proposed amended  
10 complaint, are replete with just the catch phrases from each  
11 of these causes of action without the necessary facts to  
12 support them. The one argument that we would like to  
13 highlight that is separate and apart from our co-Defendants is  
14 that the Plaintiffs seek to pierce the corporate veil as  
15 against the Skezics Defendants. We would submit to the Court  
16 that as first, and foremost, there isn't, or should not be  
17 permitted to be a separate Cause of Action in this regard.  
18 However, the complaint is devoid of any facts that Mr. Shepard  
19 was in any way individually involved. There were no single  
20 representations or acts identified by the Plaintiffs with  
21 regard to Mr. Shepard. There are no facts tending to show  
22 when any representations were made, or that there were any  
23 actions or domination by Mr. Shepard of the corporate  
24 entities. And with regard to Mr. Shepard individually, we've  
25 highlighted both the absence of any facts particularly as to

1 each of the causes of action as well as the absence of service  
2 of process or personal jurisdiction. We've submitted an  
3 affidavit by Mr. Shepard in support of both of these arguments  
4 and finally, Your Honor, we would note alternatively that the  
5 failure to name Ellyn Sosin, who is an indispensable party  
6 alone could also justify dismissal on the pleading, so unless  
7 the Court has any questions, I would rest on the balance of  
8 the papers.

9 THE COURT: I don't have any questions at this  
10 point, thank you.

11 MS. YANNUCCI: Thank you.

12 MS. SAECHAO: Good afternoon, Your Honor. My name  
13 is Tyra Saechao for the Defendant, Second Nature. Just  
14 briefly, Second Nature is a company that offers therapeutic  
15 wilderness programs for troubled adolescents, and it was the  
16 son, Andrew, who stayed at Second Nature's program in Utah for  
17 27 days, and all of the acts alleged in the complaint, which  
18 were on the basis of seven of the eight claims that are  
19 asserted against Second Nature. One of the key facts, which  
20 is undisputed by all parties, is that Ellyn Sosin had legal  
21 custody, sole legal custody, at the time of the acts alleged  
22 in the complaint and as set forth by my co-counsel we join in  
23 all of those arguments based on Kenneth's essentially lack of  
24 standing to assert various claims such as false imprisonment,  
25 tortuous interference with parental and visitation rights as

1 well as abduction. In addition to the documents that were  
2 already mentioned which Ms. Sosin executed, she also executed  
3 on behalf of my client, Second Nature, a Power of Attorney,  
4 and what the Power of Attorney did was delegate guardianship  
5 over the care and custody of Andrew while he was enrolled in  
6 its program. She also signed a contract for services which  
7 consented to Andrew's enrollment in the program and in that  
8 contract for services, there is specifically a provision that  
9 states that Second Nature does not have any responsibility or  
10 liability for any of the travel or events that occurred during  
11 Andrew's transport to its program.

12 We also would join in the arguments set forth by my co-  
13 counsel that each of the claims are insufficiently pled for  
14 reasons they express and also for reasons expressed in our  
15 moving papers as well. And lastly, with respect to Second  
16 Nature, the Plaintiff does make an argument in its opposition  
17 papers that our motion should be denied for failure to submit  
18 a Rule 56(1) statement. As Courts have held in this district,  
19 they have allowed the filing of a Rule 56(1) with the reply,  
20 where the initial failure to prepare the statement was  
21 promptly corrected and inadvertent which was done, excuse me,  
22 done here. We submitted it with our reply papers, and  
23 Plaintiff did prepare a response to it. Thank you.

24 THE COURT: Okay. Mr. Kilgannon, you're up.

25 MR. KILGANNON: Thank you, Judge. Good afternoon,

1 Your Honor. As I stated earlier, my name is Timothy  
2 Kilgannon, and I represent Andrew Decter and Kenneth Decter,  
3 the Plaintiffs in this action, Andrew being the son, Kenneth  
4 being the father. What you have here, Your Honor, is a very  
5 unique case. It's not a case that I am confident comes before  
6 this Court on a frequent basis. It all started on June 20th,  
7 2012 when Andrew was 16 years old. Pursuant to a Judgment of  
8 Divorce from the Nassau County Supreme Court, Andrew lived  
9 with his mother and that same Judgment of Divorce mandated  
10 daily telephone calls and bi-weekly visits for the father.  
11 This all took place during the summer of 2012 when Andrew was  
12 between his junior year and senior year at Manhasset High  
13 School. He was part of the Plandome Junior Fire Department.  
14 He was a tuba player in his marching band and he was the  
15 technical director of his theater program. He had no criminal  
16 record. He had no problem with drugs or alcohol and he had no  
17 behavioral problems with school. All that being the case,  
18 still Skezics, under the cloak of darkness came into Andrew's  
19 room early in the morning on June 20th. Three men came into  
20 his room. He was unaware that anyone would come in. His  
21 father was unaware that anyone would come in. Two stood over  
22 his bed, one at his bedroom door. They all displayed  
23 handcuffs and they refused to allow him to leave. He asked  
24 numerous times to speak to his father, to speak to his lawyer,  
25 and they refused. They escorted him in a car which prevented

1 his escape because it had no interior handles to allow him to  
2 leave. They brought him through the airport, and they  
3 transported him, more or less like a prisoner, to Utah. They  
4 brought him all the way to Utah. They knew where to bring  
5 him, when to bring him and Second Nature knew that he was  
6 coming. They worked together to bring him to Second Nature.  
7 They brought him to Second Nature's Camp, and they brought him  
8 out into the wilderness. Each night they took his shoes to  
9 prevent his escape. They gave him prisoner-type clothing so  
10 that he would not be able to escape. The prison guards  
11 carried knives and mace. If any child tried to escape, they  
12 performed an act which Andrew described as tarping someone,  
13 where they would pin a child down by putting a sleeping bag  
14 over him and having two guards sleep on either side of the  
15 child. Now Kenneth was at home on June 20th, and he became  
16 alarmed when he didn't hear from his son. So they speak to  
17 each other on a daily basis, so finally, after Kenneth made  
18 numerous phone calls he found out June 21st that his son was  
19 taken to Utah. He called Second Nature and they told him that  
20 they can neither confirm nor deny if they're holding his 16-  
21 year-old son. They got Andrew's and Kenneth's attorney  
22 involved, a gentleman named Michael Weinstock. Michael  
23 Weinstock sent them a copy of this Divorce Decree which stated  
24 that Kenneth is entitled to daily phone calls and bi-weekly  
25 visitation. Kenneth pleaded with them to return Andrew, but

1    they refused, and Kenneth isn't a man of wealth or great  
2    means, but he was forced to petition the Court for a Writ of  
3    Habeas Corpus. He went through extensive motion practice and  
4    finally when the petition was granted, and they were ordered  
5    to return, they returned Andrew on July 17th, 2012, but he  
6    returned unescorted. Judge, their claim is basically that we  
7    have failed to sufficiently plead the false imprisonment,  
8    kidnapping, abduction, assault, intentional infliction of  
9    emotional distress, tortuous interference of parental rights  
10    and the alienation of affections. I believe that these claims  
11    have been sufficiently pled. Just to highlight certain areas  
12    in each of these claims: On the false imprisonment claim, it  
13    is certainly true that they intended to confine Andrew. It is  
14    certainly true that Andrew was conscious of that confinement.  
15    He told them numerous times he wanted to leave. The question  
16    is whether the confinement was justified or not. The  
17    Defendants claim that this confinement and this transport was  
18    justified based upon the Declaration of Authority or the Power  
19    of Attorney, both of which we think are unenforceable and  
20    cannot allow the Defendants to violate my client's rights.  
21    What they're saying, Your Honor, is basically don't look at  
22    us, she told us to do it. So I don't think that that's a  
23    claim that should withstand. There's a very longstanding and  
24    established rule that you cannot contract to do something  
25    that's illegal, immoral or unenforceable. It dates back to a

1 case that I found Oscanyon v. Arms Company, which is a U.S.  
2 Supreme Court from 1880, but I would argue that it dates back  
3 even further than that. The Defendants argue that we asserted  
4 this claim late, but when we asserted it, we asserted it in  
5 response to their opposition, which said that our claims were  
6 insufficiently pled, and we asserted that in our reply, and we  
7 stated that this Declaration of Authority and this Power of  
8 Attorney should not be held as enforceable. Furthermore, I  
9 don't think that any Judgement of Divorce allows for the  
10 Defendants to commit assault against a 16-year-old child.  
11 They put him in fear of imminent harm, and it was stated in  
12 the complaint numerous times that Andrew was terrified. It  
13 wasn't the first time that it was stated when we opposed the  
14 motion, and clearly Andrew could have been put in fear by  
15 their actions. As for Skezics, they snuck into his room. He  
16 tried to leave and they restrained him. They had displayed  
17 handcuffs, and they continually told him not to escape. As  
18 for Second Nature, the guards there held knives, held a knife  
19 and mace. Each of them held a knife and mace. They took  
20 action which made Andrew believe that if he tried to escape  
21 they would pin him down, and they would keep him there. Now,  
22 as for the intentional infliction of emotional distress, we  
23 must show extreme or outrageous conduct, acts that were done  
24 with intention, a causal connection between the actions and  
25 the injury, and severe emotional distress. It is our position

1     that the actions of kidnapping a 16-year-old child, entering  
2     his room unannounced, and bringing him across state lines into  
3     a wilderness camp or prison is certainly extreme or  
4     outrageous. It cannot take place here, and it cannot be held  
5     to be justified simply because they believe that they were  
6     told to do this, and certainly these acts were done with  
7     intention. They purposefully snuck into his room. They  
8     purposefully refused to allow him to speak to his father.  
9     They purposefully refused to allow him to speak to his  
10    attorney. As for Second Nature, they brought him into the  
11    wilderness. They took his shoes each night when he went to  
12    bed to prevent his escape. They put on those prison uniforms  
13    to delegate him as a prisoner.

14           Now as a result of these actions, Andrew came home, he  
15    was fearful. He couldn't sleep. He was worried that men  
16    would show up in his room again to abduct him, and he  
17    continues to see a therapist. Now, we also made a claim for  
18    tortuous interference with parental rights. The Defendants  
19    argue against the tortuous interference and abduction, and  
20    those arguments are twofold. It fails because it can only be  
21    asserted against the other spouse or parent, and it fails  
22    because Kenneth doesn't have legal custody. As for it failing  
23    because it can only be held against a parent, the Defendants  
24    incorrectly rely on McGrady vs. Rosenbloom. In that case,  
25    Defendant Skezics relied on it, and the McGrady case actually



1 says, and it explicitly held that no cause of action exists  
2 when the Defendant is a parent with superior rights. In such  
3 a case, the Court there held that the proper remedy rests  
4 against the spouse who violated a Visitation Order, and the  
5 facts in this case, before this Court are dissimilar in that  
6 Mr. Decter's rights are violated by a third party and no other  
7 alternative remedy exists against this third party.

8 Now furthermore in case known as Sager v. Rochester  
9 General, and this is a Monroe County Supreme Court action from  
10 1996, and the Court of Appeals case in Pickle vs. Page, both  
11 of those actions are actions where the parents brought actions  
12 against third parties, and both of those actions show that  
13 this Court has authority to make a ruling against the  
14 Defendants here. Their next argument was that Kenneth had no  
15 legal custody to Andrew, and therefore cannot assert his  
16 rights to his visitation and his daily phone calls.

17 Your Honor, its been held time and time again, that  
18 willful interference with a non-custodial parent's rights to  
19 visitation is so inconsistent with the best interest of the  
20 child. Now although best interest is a premise that's used in  
21 custodial proceedings, if we're not here to protect the rights  
22 of our child, of the children, why are we here? The best  
23 interest of the child should be paramount to everything. It  
24 should not be dependent on what Courtroom we're in, whether  
25 we're in Family Court, Supreme Court, Federal Court, the best

1 interest of the child is what is most important, and that is  
2 that the child has the right to communicate with his father as  
3 the Court had previously ordered. Furthermore, Your Honor,  
4 just because a father, or another parent, has visitation or  
5 communication rights that aren't as frequent, or aren't as  
6 often as the other parent does not mean those rights should  
7 not be protected. What if they were to take the child for two  
8 months, three months, two years, five years, ten years, does  
9 that mean Kenneth doesn't have a right to protect his interest  
10 to communication and visitation. I don't think that that is  
11 what this Court should hold in such a case like this. This  
12 Court must protect Kenneth's rights. Your Honor, as for  
13 the --

14 THE COURT: Doesn't that overlook the fact that  
15 there is a remedy for that to sue the custodial parent, that  
16 an action could be brought against the custodial parent. It's  
17 not as if there is no remedy to the types of situations that  
18 you're discussing. Wouldn't that be a clear remedy for any  
19 such action by a custodial parent?

20 MR. KILGANNON: But what that does, Your Honor, is  
21 it lets the Defendants off the hook. He should have a right  
22 to protect his right against every person, whether it's the  
23 parent or a third party.

24 THE COURT: But give me a single case in New York,  
25 or even, I'll even look at any other case you can cite in the

1 United States where a non-custodial parent, and I emphasize  
2 non-custodial parent, has successfully brought an action  
3 against a third party for interference with visitation rights,  
4 any case in New York or anywhere else because I haven't found  
5 one.

6 MR. KILGANNON: Your Honor --

7 THE COURT: You didn't cite any in your papers and  
8 my belief is that there is no such case, but I'm willing to  
9 listen if there is one.

10 MR. KILGANNON: Your Honor, I have done the research  
11 and I think what you have before you, as I stated right in the  
12 beginning, is a unique case, but it doesn't mean that there  
13 should never be a right. Just because it was never done  
14 before doesn't mean there should never be a right. As I said,  
15 what if the mother instead of taking the child to Utah took  
16 the child to Bulgaria and never returned the child. He  
17 couldn't communicate with the child. He couldn't ever see the  
18 child again?

19 THE COURT: I know, but the flip side is you can  
20 have all sorts of situations if such a cause of action existed  
21 against third parties, schools. If a custodial parent places  
22 a kid in a school and the non-custodial parent shows up and  
23 says I'm supposed to have visitation rights today, I want to  
24 take the kid home, and the school says no, you're not doing  
25 that, then they can be sued over every little issue of

1 visitation. Third parties when confronted with a non-  
2 custodial parent could be subject to a lawsuit, and that  
3 certainly has a lot of ramifications doesn't it?

4 MR. KILGANNON: Agree, Your Honor, but this isn't a  
5 situation where Kenneth just showed up. Second Nature and  
6 Skezics both knew of his right. They both consciously  
7 disregarded his right and they took Andrew and refused to  
8 allow any visitation or communication.

9 THE COURT: What about the McGrady case? Didn't the  
10 Court reject the whole theory of third party liability in this  
11 type of situation where the custodial parent consented to the  
12 alleged interference and --

13 MR. KILGANNON: I don't believe, oh sorry.

14 THE COURT: Is that -- are you familiar with that  
15 one?

16 MR. KILGANNON: Yes, the McGrady case --

17 THE COURT: And it distinguished the case that you  
18 point to which is Pickle v. Page, which I think, as you know,  
19 involved a lawful custodian right?

20 MR. KILGANNON: Uhm-hum. Well I think in the  
21 McGrady case, the Court simply held that no cause of action  
22 exists when the Defendant is a parent with superior rights,  
23 but as for actions where a parent who has visitation or  
24 communications, I don't think the Court specifically ruled on  
25 that case or situation.

1           THE COURT: Didn't the case involve the mother's  
2 parents being accused of assisting a mother who had lawful  
3 custody into depriving the Plaintiff of visitation right.  
4 Isn't that what that case was about, McGrady?

5           MR. KILGANNON: I believe that was the case, Your  
6 Honor, yes.

7           THE COURT: So how is that different from this case?  
8 It's the same type of -- I don't understand factually how  
9 that's different from what you're alleging here. What's the  
10 difference? Maybe you can say you think it's wrongly decided,  
11 but I'm trying to figure out whether there's any factual  
12 distinction.

13          MR. KILGANNON: Your Honor, I would -- as for the  
14 McGrady case, I would say that it is different here. I mean I  
15 would say that you have a situation where it's a complete  
16 third party, not related to the Decters in any way, shape or  
17 form, that decided they would take it upon themselves to bring  
18 Andrew to Utah.

19          THE COURT: There's another case, I don't remember  
20 now if it was in the briefs or not, but Leonard v. United  
21 States. It's a Second Circuit case where the father had been  
22 granted visitation rights after divorce, the Defendant's  
23 mother had custody of the children and the mother and the  
24 children entered protective custody in connection with  
25 organized crime, prosecution and the Second Circuit stated

1     that there was no claim for abduction or false imprisonment  
2     because the mother had legal custody of the children and  
3     consented to their placement in the program, and that the  
4     father's visitation rights did not create a cause of action  
5     against third parties. Isn't that analogous to this  
6     situation? In that case you had the same type of thing,  
7     visitation rights being interfered with because of the  
8     protective custody. Second Circuit says no cause of action  
9     against the third party.

10           MR. KILGANNON: I'm not familiar with that case,  
11     Your Honor, but I do believe, and I think it would be wrong to  
12     rule in any other way, that Kenneth has a right to protect his  
13     interests in the visitation and communication with his son,  
14     and Andrew has a right to protect his interest in the  
15     visitation and communication with his father.

16           THE COURT: I know, but the mother also has the  
17     right to make the custodial decisions regarding where he goes  
18     to camp or other places as well, vis-a-vis at least third  
19     parties that's the issue really, right? Didn't she have the  
20     sole custody and the ability to decide where he should go to  
21     camp, or school or anything like that, right?

22           MR. KILGANNON: I don't think she had the right to  
23     completely disregard, you know, Kenneth's right to visitation  
24     and even Andrew's right to be free from any sort of false  
25     imprisonment like this, or the treatment that he was given by

1 the Defendants while he was in their custody.

2 THE COURT: Okay. All right, thank you.

3 MR. KILGANNON: Thank you.

4 THE COURT: I'll give you each one minute to respond  
5 if you wish to respond.

6 MS. YANNUCCI: Your Honor, on behalf of Skezics, we  
7 think the Court hit the nail on the proverbial head. Much of  
8 Mr. Kilgannon's argument devolves into a challenge to the  
9 Custody Order, a challenge to Ellyn Sosin's authority to make  
10 determinations pursuant to that Custody Order, and is inviting  
11 the Court basically to intercede in the already adjudicated  
12 rights, or the rights as they existed on the dates of the  
13 incidents here. Mr. Kilgannon was unable to identify by case  
14 law or statute any basis upon which these claims either on  
15 behalf of Kenneth, or on behalf of Andrew should be permitted  
16 to proceed, so unless the Court has any other questions, we  
17 will again rest on our papers, and thank you for the  
18 opportunity to be heard.

19 THE COURT: I don't have any other questions Ms.  
20 Yannucci. I do want you to address what occurred, Ms.  
21 Yannucci actually, I guess. No, I'm sorry, I got it mixed up.  
22 Ms. I'm going to pronounce your name wrong.

23 MS. SAECHAO: Saechao.

24 THE COURT: Saechao. I'm sorry, Ms. Yannucci, the  
25 issue of what occurred at the camp itself and whether or not

1 any of that would be actionable in terms of how he was treated  
2 at the camp, independent of the issue of the interference with  
3 visitation. Can you address that?

4 MS. SAECHAO: Sure. So the allegations concerning -  
5 - against Second Nature with respect to what happened at the  
6 camp, those are also insufficient. The only factual  
7 allegations against second nature that the Plaintiff raises,  
8 really he raises in his motion, in his proposal to amend the  
9 complaint.

10 THE COURT: Right.

11 MS. SAECHAO: So they're essentially new facts, and  
12 those have to do --

13 THE COURT: So why shouldn't I give him leave to  
14 replete to add those facts for purposes of those other claims?

15 MS. SAECHAO: Because even so, they're still  
16 insufficient to state claims --

17 THE COURT: Why not?

18 MS. SAECHAO: With respect to, I can go through most  
19 of them. With respect to, well the false imprisonment, the  
20 tortuous interference and the abduction, those really go to  
21 the standing.

22 THE COURT: Right.

23 MS. SAECHAO: There's no legal custody. The other  
24 claims, alienation of affections, just briefly, is barred by  
25 the Hart Balm Act, the New York Civil Rights Law, Section



1 80(a), and then the last three, assaults, intentional  
2 infliction of emotional distress and conspiracy all address  
3 those. Assaults, in the initial complaints, the only  
4 allegations really regarded Andrew's transport to Second  
5 Nature. In his Motion to Amend, he now asserted for the first  
6 time that the Second Nature instructors carried a knife and  
7 carried mace.

8 THE COURT: Right, and forcibly wrestled and  
9 restrained, right? Didn't he allege that too, or no?

10 MS. SAECHAO: Not him, specifically, but I believe  
11 they said he allegedly viewed that occurring to other campers.  
12 Our client has confirmed that with respect to the knife, it  
13 was a utility knife that they use for woodcarving purposes.  
14 The mace, it's not mace. It's actually bear spray since  
15 they're in the wilderness, they need bear spray, and neither  
16 of those, neither the knife or the bear spray were ever used  
17 or have ever been used against a camper. With -- and also,  
18 the documentation -- our client's position is that no one was  
19 actually restrained during the 27 days that Andrew was in the  
20 program. With respect to the intentional infliction of  
21 emotional distress claim, those also fail. All he alleges in  
22 support of that claim is that the shoes were removed at night,  
23 and that is part of the safety and security protocols of the  
24 camp since the, you know, campers are staying together at  
25 night, they don't want campers to wander around the wilderness

1 by themselves when it's dark out, so that's why the shoes are  
2 removed. He also alleges that Kenneth had no contact with  
3 Andrew. Second Nature actually advised Kenneth of Andrew's  
4 progress throughout, and they had a policy that allowed  
5 letters to be written back and forth, but Kenneth never wrote  
6 any such letters to Andrew, at least they were not in receipt  
7 of any, and with respect to conspiracy, the final claim, there  
8 still is no intent, and he hasn't pointed to any agreement  
9 between Second Nature and Skezics.

10 THE COURT: Okay. Mr. Kilgannon, the issue with the  
11 -- thank you, the Summary Judgment issue, they did file the  
12 reply, the 56(1) statement but you did get a chance to respond  
13 to that, so I don't know what prejudice there is. Is there  
14 any reason why I can't also consider this in Summary Judgment  
15 as well, to consider extrinsic documents in evidence?

16 MR. KILGANNON: I responded to it, Your Honor,  
17 respectfully, to protect my client's rights, but I think  
18 there's --

19 THE COURT: But that's normally my -- even if  
20 someone objects to the lack of what I usually tell the other  
21 side file one and then give you a chance to respond, which  
22 you've done, right? So what prejudice is there at this point?

23 MR. KILGANNON: My argument would be, and I  
24 understand Your Honor's point, but my argument would be that  
25 they failed in their first filing of their Motion for Summary

1 Judgment to allege the facts sufficient to grant the Summary  
2 Judgment Motion, but that being said, I understand Your  
3 Honor's point.

4 THE COURT: And then it -- on this his issue? Are  
5 you alleging that he himself was assaulted, or that he  
6 observed the assaults? I guess I'm confused on that issue.

7 MR. KILGANNON: Well in the camp itself, the  
8 tarping, which I discussed never took place on Andrew, but he  
9 saw what happened there to a child who tried to wander off, to  
10 try to escape, and he saw what happened there. The assault  
11 more or less took place when Andrew was taken from his home,  
12 then when he first woke up, he had tried to escape and was  
13 restrained by the transporters, the Skezics transporters.

14 THE COURT: Okay, okay I understand that part of it.

15 MR. KILGANNON: Yeah.

16 THE COURT: Okay, I'm going to reserve decision. I  
17 want to go back and look at some of the things we discussed.  
18 I appreciate everybody coming in. Okay, thank you.

19 MR. KILGANNON: Thank you, Judge.

20 MS. SAECHAO: Thank you.

21 (Court adjourned)

22

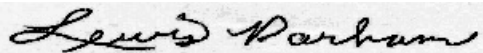
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## CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



10/24/14

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Signature of Transcriber

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Date